

## SPECIAL COUNCIL MEETING

FEBRUARY 8, 2012

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, February 8, 2012 at 8:21 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable KipuKai Kualii  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro, Council Chair

### APPROVAL OF AGENDA.

There being no objections, the agenda was approved as circulated.

Mr. Furfaro: Thank you very much. Now, Craig I will give you the floor.

### INTERVIEWS:

#### **BOARD OF REVIEW:**

- **Craig De Costa** – Term ending 12/31/2014  
( Mayoral Appointment)

CRAIG DE COSTA: Yes, first of all, thank you Mr. Chair and members of the Council.

Mr. Furfaro: You have to press the blue light on the mic.

Mr. De Costa: Sorry, I'm used to the courtroom and it's automatically on and you have to press it to turn it off. Thank you Mr. Chair and members of the Council. First of all, as just a slight correction, I believe I applied for a second term on the Board of Review, not the Charter Commission, and the reason I applied for a second term is I have been serving there for the last 3 years and have currently served as the Chair. For this past year, I was the Chair, and I think we're moving in the right direction. I would like to continue that work with regard to how the hearings are held, being fair to both the County as well as the applicants, and

possibly revising some of the rules to update it to match what the law is, and what the practices actually have been. We as a Board, I believe, we have been working well together in that direction, and that's not to say there hasn't been disagreements, but for the most part, our goals are pretty much the same, to be fair and get a fair and just outcome and be consistent with the ordinance with regards to real property tax appeals. As far as my background, I am an attorney in private practice in Lihue. I've been practicing for 15 years, the first 12 of which was with the County Prosecuting Attorney's Office. The reason I think I was originally recruited for the board was as I was retiring from the Office of the Prosecuting Attorney, I was asked by members of the Administration whether I would like to have some kind of continued role in county government. I said I would like to serve the community and maybe as a member of a board, and I was given a list of the boards that were available and this one seemed to meet my skillset, if you will, being able to follow rules and the ordinance and give someone a fair hearing and make a determination based on the facts presented and the law as it is written and given to us. Thank you.

Mr. Furfaro: First of all, thank you very much for correcting my comment on the Charter Review. I have my Charter in front of me and I have next week's schedule, which is the charter review, so I don't quite have all the moving parts together this morning. I will open it up for questions from here. Members, do you have questions for Mr. De Costa? Mr. Bynum.

TIM BYNUM: Good morning Craig. I appreciate you being here and I appreciate you stepping forward for a second term and providing some continuity, and you just made some comments about trying to move in the right direction. I think the Board of Review has been an interesting Board for probably the last couple of years with the fluctuation in property values, and you know it's hard to find "comps" on Kaua'i to really be clear, because you know, there just aren't... some categories there aren't that many, so I appreciate your efforts. If you could say a little bit more about what "moving in the right direction" means and some of the changes the Board worked on, or some of the difficulties over the last couple of years?

Mr. De Costa: Well, as far as moving in the right direction, I think it's being able to inform the appellants before the hearing. This has to do with our possible rule changes or proposed rule changes, which we're going through the proper process and as you all know, it takes a long time to really do, but to give the appellant the proper expectations of what kinds of evidence is competent evidence and not only refer them just to hear the statute, but also to have a realistic set of rules as to how the hearing is actually held. Again, to make sure that it is consistent with the statute, because when I became Chair, I looked at the rules and it had last been updated in 1988, so that's number one in moving in the right direction. Number two is to actually, as you said Councilmember Bynum, there are

a lack of “comps” and so there is a difficulty with regard to both the County as well as the appellant finding evidence to back up the numbers that they’re submitting. The County is, I think, moving in a direction with regards to the computerized, computer modeling and so forth. To give... as far as the Board moving in the right direction, is understanding that and what that means and how that affects maybe how the appellant will be able to present a case against that if they have. What kind of “comps” they’re using or what kind of evidence they’re using as well and trying to balance that. I think we have a very diverse Board right now that kind of tries to balance that really well.

Mr. Bynum: I appreciate that. The last person we had here kind of quoted the common thing I hear from some people who appealed were the Board of Review just kind of does whatever the Department says. Is it fair to say that you’ve made decisions that were not always consistent with the recommendations from the tax department?

Mr. De Costa: I think it’s fair to say that we have not only reduced or ruled in favor of the appellant, reduced some assessments, but also in doing so, in one case caused the County to then stipulate or agree to reductions in many other cases, saving the Board a lot of time. When that’s based on the evidence as presented to us and consistent with the ordinance, I think that is a good thing but I think there’s a perception by some appellants that there is rubberstamping. The flipside to that is they still need to present evidence because the way the ordinance is written is that there is a presumption in favor of the County’s assessment. They have the burden to bring in evidence, and evidence is not statistics, evidence is not newspaper articles, evidence is an islandwide trend, but evidence is “comps” related to that property. I understand the difficulty that some appellants have in coming up with “comps” just like how the County has some difficulties. When they have presented evidence, that evidence I believe had been fairly considered and has led to some reductions when appropriate.

Mr. Bynum: I just wanted to hear that answer on the record because I’m aware of those cases where you know in my view, the Board of Review has been independent in its current term and has really done its job in all of the findings haven’t been in favor of the county necessarily, so thank you again for your service and I’m glad you’re back. You have that continuity and you’re an excellent member for this commission, thank you.

Mr. De Costa: Thank you.

Mr. Furfaro: It’s not as simple as that you’re back, and we still have to vote on it.

Mr. De Costa: I understand.

Mr. Furfaro: After we vote, you're back.

Mr. De Costa: I was going to say, if the Council is willing, yes.

Mr. Furfaro: Councilmember Nakamura.

NADINE NAKAMURA: Good morning Craig, and thank you again for considering serving again on the Board of Review. Based on your observations, real property tax is the largest source of revenues for the County, and I think we all want it to be fair and equitable across the board. Do you believe, based on your work with the division, are there adequate resources to get the "comps", get the data that you need to do your job?

Mr. De Costa: If I can ask for a clarification, is the adequate resources of the County Finance in assessing the data or is it adequate resources in the Boards of Office and Commissions and their support?

Ms. Nakamura: I think both. I'm curious about both.

Mr. De Costa: Okay. I think what's interesting is that the Board will now be served by the Office of Boards and Commissions rather than the Department of Finance in this upcoming year. So I can't really speak from any personal experience, but from what I hear, they have at least 10 boards that they serve and they have 2 staff members, so that might be a difficulty. I think it was very efficient over the last 3 years and I don't expect that to change, but I don't necessarily disagree with the change, because although we had a very, very competent person serving our Board, independence from the Department of Finance might actually help in regards to public perception. I can't speak from personal experience, but 2 people for 10 commissions, and I don't know how often the other commissions meet, but that might be stretching resources. With regards to the assessors, I think the County has some pretty... you know, a challenging workload, but when they do show up for hearings, they seem prepared and do have presentations that appear to justify the numbers when we do sustain the appeals. When we don't, it's usually because there's evidence on the other side. That doesn't necessarily mean a resource problem, that's just a difference of opinion and then the Board has to make a decision.

Ms. Nakamura: Thank you again for that and let me, just to clarify, up to now the Board of Review has been staffed by the Real Property Division, and now it's going to change to the Boards and Commissions?

Mr. De Costa: That's my understanding, yes.

Ms. Nakamura: Okay, well thanks again. I think you bring a strong skillset that helps a lot with the function of this board. Thank you.

Mr. De Costa: Thank you.

Mr. Furfaro: Any more questions of the candidate? Go right ahead Councilmember.

KIPUKAI KUALI'I: Aloha and mahalo Mr. De Costa, and thank you for your willingness to serve in the past and to do so again in the future. I'm just curious as far as the number of appeals the Board of Review hears in a year and how often do you meet and what time schedule does it take to address all the appeals?

Mr. De Costa: Okay. We have been meeting 2 to 3 times a month. From what was May will probably be moved up to April, because they're moving up all of the deadlines with regards to getting the assessments out and the appeals deadline all the way through October, which will now probably be, I would suspect, September, so probably about 15-18 meetings a year, and we haven't heard all of the cases that have been docketed because there has been some occasions where there's a stipulation and/or an agreement or a withdrawal by the appellant. Some of those, have been subdivision projects that are still owned by the developer and so it's like one mass appeal with several different properties, but the issue is the same, so they're all docketed together, and sometimes they'll settle, sometimes they go to hearing. But I do think in looking at the numbers, and I don't have them in front of me, but there has been an increase in appeals over the last 3 years and that's probably because of the fluctuation with regard to value and the comps or lack of "comps" in certain areas. I think this past year we may have actually, even though we had more appeals, done less hearings than the year before, but that was already up from the prior years, but again I don't have the hard numbers in front of me.

Mr. Kualii: Thank you and thank you again for your service.  
Thank you Mr. Chair.

Mr. Furfaro: You're welcome. If there are no more questions, Mr. Bynum, I do want to just make a note that I will give the floor to somebody before you if they have a question since you've had a turn. Did you have your hand up Mr. Chang? No, then Mr. Bynum.

Mr. Bynum: Just real briefly. I forgot to mention, Craig, that I've had occasion recently to read a lot of transcripts when you presented here at Council when you were the County Prosecutor. Based on that and your 12 years of service, I just want to thank you for your 12 years of service at our Prosecutor's Office and your competent leadership while you were there. Thank you.

Mr. De Costa: Thank you.

Mr. Furfaro: Let's see, I see no other questions. I will open it up to anyone from the audience at this point. Mr. De Costa, I do want to let you know that I will be supporting your reappointment and thank you for your work. Let me see if I have public comment at this point.

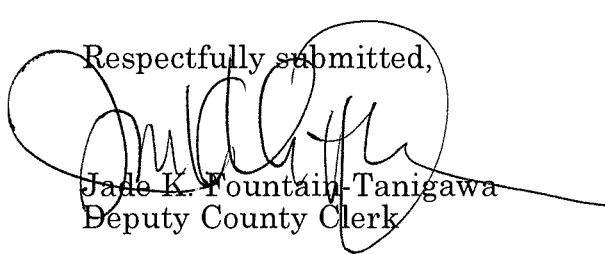
Mr. De Costa: Thank you.

Mr. Furfaro: Is there anyone in the audience that wants to speak on this candidate? I see no one. Members, we will be voting on this later, and I'm going to adjourn this special committee meeting focused on Boards and Commissions, and we'll go right into the Council meeting for today.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 8:34 a.m.

Respectfully submitted,

  
Jade K. Fountain-Tanigawa  
Deputy County Clerk

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